

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Modifying SMS/800 Disconnect and)
Suspend Status Functions to Preclude)
Transfers of Toll-Free Numbers Directly)
Between Subscribers)

DA 00-2754

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REQUEST FOR DECLARATORY RULING AND CLARIFICATION

Pursuant to Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, AT&T Corp.

("AT&T") hereby submits this request for declaratory ruling seeking clarification of a letter issued by the Network Services Division ("Division") of the Common Carrier Bureau ("Bureau") in the above-captioned proceeding.^{1/} AT&T believes that the Bureau's interpretation of the rules regarding toll-free numbers is incorrect and contrary to the public interest and, therefore, it requests that the Commission inform the Database Service Management, Inc. ("DSMI") that it need not -- and should not -- implement the changes called for in the Bureau Letter. AT&T further requests that the Commission clarify that transfers of toll-free numbers between customers to assist customers who have legitimate reasons to move numbers to another customer (e.g., when a customer restructures its business via a spin-off, merger or acquisition; when numbers are misprinted in advertising materials; or when a customer wants to alleviate significant wrong-number calls to similar numbers) are permissible under the Commission's rules.

^{1/} Letter from L. Charles Keller, Chief, Network Services Division to Michael Wade, President, Database Service Management, Inc., Modifying SMS/800 Disconnect and Suspend Status Functions to Preclude Transfers of Toll-Free Numbers Directly Between Subscribers, DA 00-2754 (rel. Dec. 7, 2000) ("Bureau Letter").

INTRODUCTION

The growth in the use of toll-free service by both businesses and consumers has been astounding in recent years. Unlike traditional calls, toll-free service allows a caller to reach any business easily, without a charge. In addition, more and more residential consumers are subscribing to toll-free service to offer their friends and family a convenient and cost-efficient method of keeping in touch. With the enactment of the Telecommunications Act of 1996 ("Act") and the resulting proliferation of carriers offering long-distance services, the popularity of toll-free service for both personal and business use has continued to grow at astonishing rates.

Recognizing this growth, the Commission worked with the industry to assign additional toll-free codes beyond the traditional 800 code.^{2/} In addition, the Commission adopted rules to assist the Responsible Organizations ("RespOrgs") distributing toll-free numbers and the entity managing the database system for toll-free numbers -- DSMI -- to use toll-free numbers more efficiently.^{3/} Among other things, these rules prohibit warehousing or hoarding of toll-free numbers and they establish consistent, industry-wide classifications for toll-free numbers of one status or another (e.g., Active, Reserved, Spare, etc.).^{4/} AT&T has no objection to the warehousing and hoarding rules promulgated by the Commission. Rather, this request for declaratory ruling and clarification concerns a Bureau action that goes beyond these rules.

Generally, the Bureau Letter requires DSMI to make three substantive changes to the toll-free number database system.^{5/} First, the Bureau directs DSMI to ensure that a number currently

^{2/} Toll Free Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-155, ¶¶ 9-11 (rel. April 11, 1997) ("Toll Free Order").

^{3/} See generally Toll Free Order.

^{4/} 47 C.F.R. §§ 52.101-109.

^{5/} Bureau Letter at 2. Originally, the changes were to be completed within sixty days of the issuance of the letter. See Bureau Letter at 2. Based on requests from carriers (citing the time

in Disconnect Status^{6/} cannot be changed into any status but Spare Status.^{7/} Second, the Bureau Letter orders DSMI to make database changes so that a number in Suspend Status^{8/} cannot be changed to any status but Working Status for the same subscriber.^{9/} Third, pursuant to the Bureau Letter, DSMI is required to create an over-ride capability that would require RespOrgs to request in writing to DSMI assistance for functions that RespOrgs can today implement directly and efficiently (e.g., correcting errors or activating numbers in disconnect status, or sending suspended numbers to spare).^{10/} In addition, the Bureau Letter suggests that all transfers of toll-free numbers between customers are unlawful. As discussed below, these new mandates and rule interpretations impose unnecessary restrictions on the ability of RespOrgs to respond to legitimate customer needs and are outside the scope of existing rules.

needed to make such substantive changes), the Bureau later postponed the deadline for these changes until August 6, 2001. See Letter from Staci Pies, Deputy Chief, Network Services Division, to Michael Wade, President, Database Service Management, Inc., Postponing Modifications to Disconnect and Suspend Status Functions to Preclude Transfers of Toll-Free Numbers Between Subscribers Until August 6, 2001, DA 01-292 (rel. Feb. 2, 2001).

^{6/} The Commission's rules define Disconnect Status as a "toll free number [that] has been discontinued and an exchange carrier intercept recording is being provided." 47 C.F.R. § 52.103(a)(2).

^{7/} Bureau Letter at 3. A toll-free number in Spare Status "is available for assignment by a Responsible Organization." 47 C.F.R. § 52.103(a)(6).

^{8/} When a toll-free number is in Suspend Status, it has been temporarily disconnected, but is scheduled to be reactivated. See 47 C.F.R. §§ 52.103(a)(7), 52.103(e).

^{9/} Bureau Letter at 3.

^{10/} Bureau Letter at 4.

I. THE COMMISSION SHOULD RESCIND THE CHANGES TO DSMI ORDERED BY THE BUREAU LETTER.

AT&T strongly supports the Commission's rules prohibiting the warehousing or hoarding of toll-free numbers.^{11/} While seeking to ensure that carriers comply with the Commission's rules, however, the Bureau Letter suggests that RespOrgs are brokering numbers in violation of the Commission's rules. In particular, the letter states that the Commission has received numerous "reports" that numbers are disconnected or placed in Suspend Status without subscribers' knowledge and then transferred to other customers.^{12/} This implication is incorrect. In AT&T's experience, RespOrgs are complying fully with both the letter and spirit of the Commission's rules. In fact, the changes ordered by the Bureau Letter significantly alter the manner in which toll-free numbers are administered today and are themselves inconsistent with the Commission's rules.

Perhaps the most troubling feature of the Bureau Letter is that it would effectively compromise a RespOrg's ability to perform legitimate functions that are part of the everyday administration of toll-free numbers, including making changes in the database to reflect wrongfully disconnected numbers, reactivate numbers that had been disconnected for a subscriber's failure to pay or customer name and address changes. While the Bureau Letter proscribes all "direct transfers" between toll-free service subscribers, it ignores that direct transfers may occur to correct erroneous assignments of numbers. Nor does the letter acknowledge that the actual "subscriber" of toll-free numbers may change as a result of name or address changes or corporate mergers and acquisitions, which could affect hundreds or even thousands of toll-free numbers.

^{11/} 47 C.F.R. §§ 52.105, 52.107.

^{12/} Bureau Letter at 1.

These types of daily functions, while permissible under the Commission's rules, would be severely undermined by the Bureau Letter's mandates. For example, the Commission's rules currently permit RespOrgs to return a number in Disconnect Status directly to Working Status before the expiration of the four-month disconnect interval.^{13/} Within the confines of this rule, RespOrgs may immediately correct unintended provisioning mistakes or keying errors, or reactivate numbers when a subscriber that was disconnected brings its account current. Consistent with the Commission's rules, the majority of RespOrgs place a number in Disconnect Status when a customer's account is not current.^{14/} The Bureau Letter's directives, however, would eliminate a RespOrg's ability to respond quickly to errors by prohibiting them from changing numbers in Disconnect Status to any other status but Spare.^{15/}

The Bureau Letter also would disrupt a RespOrg's normal business practices by requiring RespOrgs to contact the Help Desk, in writing, to address these types of issues.^{16/} This process, in addition to being inconsistent with the Commission's rules, is likely to delay implementation of a result desired by the subscriber, increase a RespOrg's costs, and create ill will among those customers who are prevented from reactivating disconnected numbers or moving numbers to another customer.

Moreover, the Bureau Letter is problematic as a matter of administrative procedure. The Bureau lacks the authority to order substantive rule changes without a notice and comment

^{13/} 47 C.F.R. § 103(d).

^{14/} During informal discussions, Bureau staff expressed their view that numbers involved in billing disputes may only be placed in Suspend Status, not Disconnect Status. The Commissions' rules, however, state that "only numbers involved in billing disputes shall be eligible for suspend status," not that Suspend Status is the only category that may be used when there are billing problems. See 47 C.F.R. § 52.103(e).

^{15/} Bureau Letter at 3.

^{16/} Bureau Letter at 4.

period. As explained above, the Bureau Letter would require RespOrgs to make significant modifications in their administration of toll-free numbers. Sprint correctly notes that there is nothing in the record that would support the Bureau's adoption of such radical changes without the opportunity for the members of the industry most familiar with the process to offer their opinions and recommendations.^{17/} If the Commission believes there may be merit to the Bureau Letter's requirements, it should first commence a rulemaking proceeding and permit those parties who are the most affected by the changes outlined in the Bureau Letter to express their views before any decisions are made to change the current regulations.

II. THE COMMISSION SHOULD CLARIFY THAT TRANSFERS OF 800 NUMBERS BETWEEN CUSTOMERS ARE NOT PER SE UNLAWFUL.

Because individual RespOrgs may interpret the Commission's rules concerning the transfer of toll-free numbers between customers differently, AT&T seeks further clarification on what constitutes an unlawful transfer under the Commission's rules. RespOrgs have many legitimate reasons for transferring numbers between customers, and they currently do so while complying with the Commission's rules.

As outlined above, these changes may include situations involving accidental disconnects, name changes, and corporate reorganizations. Other legitimate transfers between customers occur to rectify problems associated with misadvertised or misprinted numbers in marketing materials. Because a misprinted toll-free number can result in tremendous costs for all parties involved, RespOrgs attempt to resolve the problem as quickly as possible, sometimes by facilitating the transfer of the number to the "correct" party. Generally, this process involves coordinating talks between the two toll-free subscribers or trading numbers with another carrier.

^{17/} Letter from Norina Moy, Sprint, to L. Charles Keller, Common Carrier Bureau, at 1 (Dec. 19, 2000) ("Sprint Ex Parte Letter").

While this process has been a longstanding industry practice and is permitted under the Commission's rules,^{18/} the Bureau Letter implies that it is beyond the authority of RespOrgs.

As Sprint explains, the misprinting or misadvertising of toll-free numbers is a common mistake that RespOrgs deal with on a daily basis.^{19/} In fact, in the week preceding the filing of this Request, AT&T assisted a nationwide discount department store, a large electronics retailer, and a major bank card company in resolving difficulties associated with misprinted mailers and brochures. If, under the Bureau Letter's directives, a RespOrg is unable to negotiate a transfer of the number between customers, both the company that mistakenly publishes the wrong number and the entity that subscribes to that number could face enormous and unnecessary costs. The erring company would still have to pay for staffing its calling center, but it would lose customers, and ultimately sales, because it would not actually receive any calls directed to the misprinted number. In addition, the subscriber receiving the misdirected calls would be responsible for paying for those calls, which could amount to hundreds of dollars a day. In this regard, the influx of hundreds, or even thousands, of calls could be harmful to the company's business, requiring employees to waste time answering the calls and blocking legitimate calls to the business. The Bureau Letter's directives also would harm end users who would be unable to reach the entity they wished to contact. Significantly, every one of these parties would look to the RespOrg as the entity best situated to address the problem and, in AT&T's experience,

^{18/} AT&T and other RespOrgs believe that transfers under the circumstances described above do not constitute "number brokering, which is the selling of a toll free number by a private entity for a fee." 47 C.F.R. § 52.107(a). AT&T does not endorse the transfer of the number for a fee when facilitating the transfer of numbers between customers.

^{19/} See Sprint Ex Parte Letter at 2. Sprint explains that, between January 2000 and November 2000, it was involved in the transfer of several hundred toll free numbers. Generally, these transfers were necessary due to misadvised or misprinted numbers. See id.

subscribers are quite willing to facilitate the transfer of the number to avoid these costs. There is simply no public interest or legal basis for refusing to let it do so.

As a possible solution to the problem, the Bureau, in informal discussions, suggested that RespOrgs may contact Bureau staff, via e-mail, to request a waiver when these types of transfers are needed. The Bureau indicated that it could grant the waiver within two business days. While AT&T appreciates the Bureau's willingness to assist, the attempt to impose a regulatory fix when the current system has not been shown to be broken is misguided. Moreover, as the Commission recently recognized, in the context of applying its carrier change rules to situations when carriers merge or sell their customer bases, a waiver process (even a streamlined one) is ill-suited for addressing situations that arise frequently.^{20/} That conclusion pertained to events that occurred fifty times in the past year -- or approximately once a week.^{21/} By contrast, in AT&T's experience, the number transfers involved here occur much more frequently (a single RespOrg indicated that it made hundreds of these changes in an eleven-month period),^{22/} so the Bureau would inevitably be inundated and overwhelmed by waiver requests if current practices are not permitted to continue. Even if the Bureau could somehow handle all these situations and meet its proposed two-day timeline, the facts would remain that (1) a two-day delay in dealing with these situations is unreasonably long from a business standpoint and (2) there is no good reason for the Bureau to assume a role in the process, especially without explicit Commission authority.

In light of the potential costs associated with misprinted numbers, as well inadvertent disconnects, routine name and address changes, and corporate mergers and acquisitions, the

^{20/} 2000 Biennial Review - Review of Policies and Rules Concerning Unauthorized Changes of Customers Long Distance Carriers, First Report and Order, CC Docket No. 00-257, ¶ 1 (rel. May 15, 2001).

^{21/} Id. at ¶ 9.

^{22/} See supra n.19.

Commission should clarify that these types of transfers between customers are permissible under its rules. In a competitive market, responding quickly to customers' needs and promptly rectifying problems is of paramount importance. The Bureau Letter's directives would impair AT&T's ability to offer quality service to its toll-free service customers and would needlessly delay what would otherwise be a speedy correction of errors. Equally important, the Bureau Letter would not remedy any genuine warehousing or hoarding problems that may be occurring.

CONCLUSION


For the foregoing reasons, the Commission should issue a declaratory ruling rescinding the Bureau Letter's order to DSMI to make certain database changes, and clarifying that the types of transfers of toll-free numbers described herein are permissible under the Commission's rules.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Angela Collins, hereby certify that on this 24th day of May, 2001, copies of the foregoing "Request for Declaratory Ruling and Clarification" were sent via hand delivery to the following:

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